

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Parts 32 and 64 of the
Commission's Rules to Account for
Transactions Between Carriers and
Their Nonregulated Affiliates

CC Docket No. 93-251

COMMENTS OF THE INFORMATION TECHNOLOGY
ASSOCIATION OF AMERICA

The Information Technology Association of America ("ITAA"), by its attorneys, hereby submits the following comments in response to the Notice of Proposed Rulemaking ("Notice") which the Commission issued in the above-captioned proceeding on October 20, 1993.¹ In the Notice, the Commission has proposed to amend those of its rules which govern transactions between the regulated and nonregulated affiliates of dominant common carriers. The Commission's current affiliate transaction rules set forth a variety of requirements for recording the costs of transactions between the regulated and nonregulated components of these carriers. The rules proposed by the Notice would strengthen these safeguards and thus provide greater protection against the cross-subsidization of nonregulated activities with the revenues of regulated, monopoly activities. The proposed rules should therefore be adopted by the Commission.

^{1/} See Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates, CC Docket No. 93-251 (released Oct. 17, 1993).

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List A B C D E

I. INTRODUCTION

ITAA is the principal trade association of the computer software and services industry. Its member companies provide the public with a wide variety of computer-related services, including local batch processing, software design and support, systems integration, facilities management and network-based information services. The enhanced services provided by ITAA's member companies are used by business, government and residential customers, and include such diverse offerings as credit card authorization, computer-aided design and manufacturing, database retrieval, data distribution, electronic mail, electronic data interchange, gateways, information management, transaction processing, value-added network services, and other remote access data processing services.

In delivering these enhanced services to their customers, ITAA's members rely on the communications services provided by local exchange carriers and long distance telephone companies. As a consequence, ITAA's members have an interest in ensuring that the rates they pay for regulated monopoly services are not artificially inflated to subsidize the competitive, unregulated activities of communications common carriers. As potential competitors of these carriers in the provision of enhanced services, ITAA's members also have an interest in ensuring that all enhanced services providers have equal, nondiscriminatory access to transparent basic transmission services and facilities.

II. THE COMMISSION SHOULD ADOPT THE RULES PROPOSED BY THE NOTICE.

In the Notice, the Commission has proposed rules which would amend Parts 32 and 64 to strengthen the Commission's ability to prevent carriers from shifting the costs of nonregulated activities to their regulated operations. Specifically, the proposed rules would: (i) restrict the use of prevailing company pricing to transactions in which the nonregulated affiliate sells at least seventy-five percent of its output to

non-affiliates; (ii) require all affiliate transactions involving services, other than those provided pursuant to tariff or permitted to be recorded at prevailing company prices, to be recorded at the higher of cost or estimated fair market value when the carrier is the seller, and the lower of cost or estimated fair market value when the carrier is the purchaser; and (iii) require carriers to calculate affiliate transaction costs using valuation methods similar to those required for calculating interstate revenue requirements.²

ITAA commends the Commission for proposing these improvements in the affiliate transaction rules. Over the years, ITAA has consistently encouraged the Commission to adopt the strongest possible measures to protect ratepayers and competitors against carrier cross-subsidization and anticompetitive abuse. In Computer III and other related proceedings, ITAA has repeatedly demonstrated that structural separation is the most effective and only proven means of preventing cross-subsidization and the other forms of anticompetitive abuse that become possible when a dominant carrier enters unregulated markets. ITAA, however, has also pointed out that rigorous non-structural safeguards are absolutely essential in the absence of structural separation.

The rules proposed by the Notice would significantly enhance the Commission's ability to prevent carriers from imposing the costs of nonregulated activities on ratepayers. In particular, the proposal to restrict nonregulated affiliates from using prevailing company pricing for affiliate transactions unless the vast majority of its output is to non-affiliates would establish a sensible, meaningful bright-line rule that would be relatively easy to implement and monitor. Likewise, the proposal to establish cost-based valuation for services would look beyond the prices charged to the actual costs incurred by the nonregulated entity. As the Commission pointed out in the

^{2/} Id. at Appendix.

Notice, "those costs [would] provide a useful tool for determining the amounts the carrier would have paid or received had it dealt only with non-affiliates."³ Finally, the Commission's proposal to require carriers to calculate affiliate transaction costs using methods similar to the more rigorous methods required for calculating interstate revenue requirements would ensure greater accountability. Taken together, the proposed rules would measurably enhance the Commission's ability to prevent cross-subsidization between dominant carriers' regulated and nonregulated activities.

III. CONCLUSION

For all of the reasons set forth above, the Commission should adopt the rules proposed in the Notice.

Respectfully submitted,

THE INFORMATION TECHNOLOGY
ASSOCIATION OF AMERICA



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³/ Id. at ¶ 12.